IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

Crl.MC.No. 558 of 2005(D)

CC.489/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KUNNAMKULAM

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PETITIONERS/ACCUSED 2 AND 4:

1. RASHEED, AGED 28 YEARS,
   S/O. MOHAMMED, PUTHENKOTTAKKAL,
   KOTTUVALLY VILLAGE, PARUR TALUK,
   VANIYAKKADU, ERNAKULAM DISTRICT.

2. SHAMOJ, AGED 27 YEARS,
   S/O.IBRAHIM, KATTUNGAPARAMBIL HOUSE,
   VADAKKEKKARA VILLAGE, PARUR TALUK,
   ERNAKULAM DISTRICT.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.JACOB SEBASTIAN
SRI.PRAVEEN K. JOY

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

1. STATE OF KERALA, REP. BY CIRCLE INSPECTOR
   OF POLICE, VADAKKANCHERRY POLICE STATION.

2. SHAJU M.K. S/O. KOCHAPPAN, MENCHERRY
   HOUSE, PARAYAMPADAM DESOM, AGATHIYOOR,
   KUNNAMKULAM, CHOWALLOOR VILLAGE.

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU
BY ADV. SRI.SANTHEEP ANKARATH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.M.C.No. 558 of 2005

ORDER

Petitioners are Accused Nos.2 and 4 in C.C.No. 489/02 on the file of the Judicial First Class Magistrate's Court, Kunnamkulam, registered for offence under Section 394 IPC read with Section 34 thereof, on the basis of Annexure-I final report submitted in Crime No.93/00 of Erumapetty Police Station. The allegation is that the petitioners committed decoity of a Lorry bearing Reg.No.KL-8/B 3434 waylaying the said lorry in front of Vellarakad Village Office and causing hurt to CW2, the driver of the lorry, while the lorry was proceeding from Kunnamkulam towards Wadakkancherry.

2. It is contended before me by the learned counsel for the petitioners that the petitioners were taking possession of the lorry, as they were engaged by the financiers M/s.Kotak Mahindra Finance Ltd., from whom, finance was availed of and

there was hire purchase agreement between the owner of the lorry and the financiers aforesaid. Apart from the contention so advanced, there is nothing on record to show that they were taking possession of the lorry as instructed by the financiers. Such contentions, if at all tenable, have to be advanced at the stage of trial and cannot be countenanced by this Court in a petition filed under Section 482 of the Cr.P.C. This Crl.M.C., in the circumstances, is devoid of merit and deserves to be dismissed.

In the result, I dismiss this Crl.M.C.

19th December, 2007 (K.P.Balachandran, Judge)

tkv